

APPEAL NO. 010745

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 26, 2000. With respect to the issues before him, the hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. A Commission Order for Attorney's Fees (Order) was issued on March 16, 2001, approving 34.90 hours out of the requested 46.20 hours requested by the attorney for the carrier for a total approved fee of \$4,582.49 out of the \$6,014.79 requested. The attorney appeals, urging that all 46.20 hours submitted in the Application for Attorney's Fees (TWCC-152) were reasonable, necessary, and justified in the representation of the carrier. The file contains no response from the claimant or the carrier.

DECISION

Reversed and remanded.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(b) (Rule 152.4(b)) provides that an attorney may request, and the Texas Workers' Compensation Commission (Commission) may approve, a number of hours greater than those allowed by the guidelines if the attorney demonstrates to the satisfaction of the Commission that the higher fee was justified. The attorney states in his appeal that a justification text, describing the complexity of the case, was submitted along with the TWCC-152. However, the appeals file does not contain the TWCC-152 or the justification text.

The Order reflects that the hearing officer gave no explanation for not approving the disputed hours other than the notation "Ex Guideline/Unreasonabl," in the remarks section. The Attorney Fee Processing System shows that there was no log text by the hearing officer. The mere comment "exceeded guidelines," without more, is insufficient to deny a particular request where a justification text was submitted by the attorney. Texas Workers' Compensation Commission Appeal No. 970770, decided June 13, 1997. In this case, although a justification text was apparently submitted, the hearing officer entered no text giving further reasons for disallowing the items in question.

In light of the fact that the appeals file does not contain a TWCC-152 with justification text, and because the hearing officer disallowed the hours in question without giving any further explanation than the notation "Ex Guideline/Unreasonabl," we reverse the Order and remand the case to review the attorney's fees in light of the justification text.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is

received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge